

# **11.0 RESPONSES TO COMMENTS FROM THE ENVIRONMENTAL PROTECTION INFORMATION CENTER**

## **11.1 RELATIONSHIPS OF MANAGEMENT PLAN, DRAFT EIR, AND OTHER PLANNING AND ENVIRONMENTAL STUDIES**

This comment addresses possible relationships among the Draft Management Plan, the Draft EIR, and several other documents that relate to Humboldt Bay's management.

### **11.1.1 District Planning**

This comment expresses an opinion that the Draft EIR was deficient because it did not explicitly incorporate consideration of the potential environmental effects of the 2003 Harbor Revitalization "Plan"<sup>1</sup> and the District's 2001 Strategic Plan.

The District does not conclude that this comment raises a substantive issue. The comment is virtually the same comment that is addressed in Section 10.12 of this Final EIR. As noted in that section, the circumstances surrounding these internal District documents was described in Section 5.3 of this Final EIR. The referenced documents do not represent independent policy formulations for the bay's management; to the extent that policy recommendations of those documents might be acted upon, the relevant policy elements are included in the Draft Management Plan and were covered in the Draft EIR.

### **11.1.2 Projects of Federal and State Agencies**

The comment expresses the opinion that the environmental assessment process for the Humboldt Bay Deepening Project may have been flawed, and (by implication) that the Draft EIR is flawed because it did not fully address the Deepening Project.

This District does not find that this comment raises a substantive environmental issue. It should be noted that the Deepening Project was/is a federal project, carried out by the U.S. Army Corps of Engineers pursuant to Congressional direction.<sup>2</sup> The legal responsibility for assessing the environmental consequences of that project continues to rest with the federal lead agency (the Corps), and the Draft EIR for the Management Plan is not required to independently address this federal project. Comments or questions regarding the environmental assessment of the Deepening Project must be directed to the appropriate federal agency.

---

1 The comment also refers to a 2004 "Humboldt Bay Revitalization Plan." As noted in Final EIR Section 10.12, the only "revitalization plan" developed for the bay is the 2003 study prepared by PB Marine for the District, the City of Eureka, and the County of Humboldt.

2 The District acted as the "local sponsor" of the project, as required by the Water Resources Development Act, and acted to certify the environmental document (an EIR) prepared by the Corps in conjunction with the Deepening Project EIS. However, the District did not prepare or participate in the environmental assessment in the federal Environmental Impact Statement.

Further, the Draft EIR only addresses any aspect of the Deepening Project with respect to the analytical process and the evidence present in the Deepening Project's Environmental Impact Statement (EIS; this was prepared by the Corps pursuant to the National Environmental Policy Act). Following this independent review, the Management Plan's Draft EIR reached its own independent conclusion about the subject under consideration (sedimentation and sediment movement in the bay's channels).

## **11.2 CEQA ASSESSMENTS FOR IMPLEMENTATION ELEMENTS**

This comment states an opinion that the District is likely to approve future projects or other Plan implementation elements without adequately considering their environmental consequences, based upon an improper reliance on the Draft EIR.

The District has concluded that this concern does not reflect a flaw in the Draft EIR. The CEQA context of the Management Plan's future implementation is clearly stated in subsection 1.2.2 of the Draft EIR:

"The precise timing and scope of actions that may occur for most of the policies in the Draft Humboldt Bay Management Plan are uncertain. Because the Plan does not explicitly identify most future implementation actions, it will be necessary for the District to conduct an additional CEQA screening for many (perhaps essentially all) future proposals to implement the Plan. The District anticipates that the information contained in this document will provide a baseline for considering possible environmental consequences of future management activities, as well as baseline information for reviews by other agencies in the Humboldt Bay region. The environmental reviews of each of the future proposals will tier to the assessments in this EIR." (Draft EIR page 1-6)

The District has concluded that the approach described in the Draft EIR comports fully with CEQA's requirements.

## **11.3 GEOGRAPHIC AND TEMPORAL SCOPE OF MANAGEMENT PLAN AND EIR COVERAGE**

This comment asserts an opinion that the Draft EIR is flawed because it does not incorporate an assessment of all past, present, and future projects within the geographical area that could affect any aspect of Humboldt Bay's ecosystem and any human activities that may be related to the bay's management. This assertion is tied to an alleged failure of the Management Plan to include policies for geographical areas that lie outside the District's legal jurisdiction. The basis of the linkage is a set of physical and biological relationships (a number of which were explicitly identified in the Draft EIR) between actions that occur in the bay's watershed and environmental conditions in Humboldt Bay.

The District does not find that the essential thread of this comment reflects a substantial environmental issue, for many reasons. In the broadest sense, the District rejects the comment's implication that the Management Plan, and therefore the EIR, should have incorporated a policy focus that included the geographical region outside of the bay's tidelands. As summarized previously (see Section 10.6 in this Final EIR), it is unrealistic

for the Management Plan to include a policy focus (namely a regulation of possible actions in the watershed's uplands) that could never be implemented by the District.

The logical consequence of the comment's focus on "projects" within the broader geographical area that includes Humboldt Bay is that virtually no action that occurs within the watershed could be definitely excluded from consideration in the Draft EIR if there were any potential that it might affect Humboldt Bay.<sup>3</sup> However, the District is unlikely ever to be able to identify all of the possible actions within the watershed, and elsewhere, that might affect the bay. Such an undertaking would be highly speculative, at a minimum, and the District has concluded that speculating about future environmental effects of the Management Plan's implementation is inconsistent with CEQA's requirements (see Section 2.9 of this Final EIR).

However, the District fundamentally disagrees with the comment's thrust that the Draft EIR is deficient in characterizing the environmental relationships within the bay's watershed that have been or could be affected by activities that have occurred, are occurring, or may occur. The District has concluded that the Draft EIR does characterize the physical and biological relationships among the bay's environmental resources and the watershed, including the nearshore Pacific Ocean. The District expects that the assessments in the EIR will form the basis for many extended District interactions with other agencies and a variety of interested parties about the causal relationships affecting the bay's resources, exactly as the policy framework in the Draft Management Plan requires.

## **11.4 CONSIDERATION OF ALTERNATIVES**

This comment includes several interwoven concepts, which are separated here for clarity.

### **11.4.1 Alternatives for Individual Policies**

The first element in the comment is an opinion that the Draft EIR is inadequate because it should have evaluated, but didn't, "reasonable alternatives" for each policy in the Draft Management Plan.

This is virtually the same statement of opinion as one of the comments addressed in Section 10.7 of this Final EIR. Please refer to that section for the District's response.

### **11.4.2 Commitment to Policy Implementation and Collaborative Implementation**

The second element in this comment is an opinion that the Draft EIR should have specifically identified a commitment by the District to implement every policy that includes a collaborative implementation approach; failing that the Draft EIR should have

---

<sup>3</sup> The comment quotes from a court opinion that explicitly addresses a "project." As noted previously, the Management Plan is not a "project," and the Draft EIR is not a "project EIR." The Draft EIR does not address the environmental effects of any "projects" that may subsequently be proposed to implement the Plan, although it is expected that the CEQA documents that do address the effects of these implementation projects will incorporate assessments from the Management Plan EIR.

identified and evaluated a policy alternative for every policy in the Draft Management Plan for which a collaborative approach to implementation was proposed.

The District observes that the Draft Management Plan and the Draft EIR both did contain commitments by the District to implement all of the Plan's policies (see, e.g., FEIR Sections 10.3 and 10.7 for additional information). As this Final EIR has indicated a number of times, the District is committed to the Management Plan's implementation, including the implementation of policies that direct the District to collaboratively develop implementation plans for complex policy elements.

This comment also appears to suggest that the EIR should have engaged in active speculation about the nature of the alternatives for policies that were included in the Management Plan, a document that was tentatively adopted by the District's Board as an expression of the District's desired policy focus.<sup>4</sup> As this Final EIR has noted several times (e.g., in Section 2.9), it is inappropriate for CEQA documents to advance speculative assessments or conclusions; it would seem to be doubly inappropriate for an EIR to create new policy alternatives for a legislative action such as the Management Plan, a document in which the policy formulation process involved the collaborative contributions of many people over a number of years. Consequently, the District finds that the comment does not raise unaddressed substantive environmental issues.

#### **11.4.3 The Environmental Baseline and the 1975 Master Plan as an Alternative to the Draft Management Plan**

The third element in the comment states an opinion that the Draft EIR was deficient because it failed to identify the current "state of the bay," instead relying on the policy framework in the 1975 Master Plan as the "baseline" for the EIR's assessments.

The District observes that the comment inappropriately crosses two separate analytical elements: the "baseline" for the CEQA assessment, and the "no project" alternative for the EIR's policy framework.

The District has concluded that the Draft EIR adequately identified the "environmental baseline" for the EIR's assessments. These baseline conditions are the conditions present in the Humboldt Bay region at the present time. The Draft EIR incorporated the most current technical information, and current scientific models, in characterizing a variety of physical and biological factors affecting the bay's environmental resources. The Draft EIR's assessments were based on the current conditions identified through this characterization.

The 1975 Master Plan is not the environmental baseline for the EIR's assessments; it is, however, the alternative policy framework against which the Draft Management Plan must be compared. That is (as is often the case for CEQA reviews associated with planning contexts), the "no project" alternative is not a return to pre-development conditions, but rather a continuation of the planning framework that was in place when the "new"

---

<sup>4</sup> The District Board of Commissioners authorized the issuance of the Draft Management Plan on which the Draft EIR was based as a "tentative" expression of District policy; the Board indicated that the District intended to adopt the policy framework (with necessary amendments, based on the CEQA review) formally at the completion of the CEQA review process.

planning process was initiated. See Section 2.2 in the Draft EIR for additional information.

## **11.5 CUMULATIVE EFFECTS**

This comment asserts that the Draft EIR fails to meet the CEQA requirements for cumulative impact assessment, through a failure to incorporate a consideration of past, present, and future “projects” on the bay’s environmental resources.

The District does not find a substantive new issue here. This comment is very similar to the comment addressed in Final EIR Section 10.5, in which the District rejected a commenter’s opinion that the EIR failed to consider the cumulative effects that might arise for the bay’s environmental resources as a consequence of Plan implementation. As with the comment addressed in Section 10.5, this comment presents no examples that support its assertion.

The District observes that the comment appears to misinterpret the nature of the “project” addressed by the Draft EIR. The Draft EIR considered the potential effects arising because of the adoption of a planning program. The DEIR did not address the approval of any proposal that would lead to a physical modification of the environment; that is, the DEIR is not a “project EIR” (see the discussion in Final EIR Section 10.6). The Draft EIR clearly described the nature of the EIR and its coverage in Section 1.2, and it clearly stated (in subsection 1.2.2) that implementation projects would be required to undergo additional CEQA assessment prior to their approval.

As is indicated in FEIR Section 10.5, the District has concluded that the Draft EIR programmatically identified potential cumulative effects in the contexts in which such effects might arise as a consequence of implementing the Draft Plan, along with policy-based mitigation measures for those effects, where feasible.

## **11.6 EROSION AND SEDIMENTATION I**

This comment expresses an opinion that the Draft EIR is deficient because it fails to conclude that the Draft Plan lacks a policy that explicitly addresses sediment mobilized from the bay’s watershed, and that the Plan is therefore defective.

The District observes that the Draft Plan does, in fact have a policy that addresses sediment: Policy HWM-6 requires that the District shall collaborate with the Regional Board and other interested parties in developing a comprehensive sediment-management approach for the watershed.

The actual issue on which the comment is focused is, however, not the management of Humboldt Bay, but the incitement of District involvement in sediment-management actions in the watershed. In this context, this comment is virtually indistinguishable from the comment that is addressed in Final EIR Section 10.8, and the District’s response is the same.

## 11.7 GLOBAL WARMING AND SEA LEVEL INCREASE

This comment states an opinion that the Draft EIR is deficient because it lacks a policy that compels the District to address global warming. The comment further opines that the Plan and the EIR are deficient because the Plan lacks a policy focus to address sea level rise and the EIR fails to note this defect.

The Draft Management Plan currently lacks a policy that explicitly addresses a District response to global climate change; this subject has never heretofore been suggested by any member of the public or any agency representative as an issue about which the District should be concerned. At the present time it is unclear how the District might address this concern, although the District might (for example) develop and implement policies that strive for energy efficient operations with low greenhouse gas emission potential. Accordingly, the District proposes to address this concern by adding the following new policy to the Draft Management Plan; the addition of this policy element reduces the Management Plan's potential effect on global warming to levels that are less-than-significant (added text in underline):

### **CEP-13: Greenhouse gas emissions to be considered**

Policy: The District shall consult with the California Energy Commission, the California Air Resources Board, and other interested parties in identifying relationships among District operations, energy consumption, and the related greenhouse gas (GHG) emissions. The District shall develop a plan to comply with state of California GHG recommendations, or with regulations that may be promulgated for local agencies pursuant to state or federal law.

The District observes that the comment is incorrect in asserting that the Draft Management Plan lacks a policy element that addresses sea level increases related to global climate change in the near-term future. This concern is discussed extensively in subsection 5.4.1 in the Draft EIR, and the Draft EIR includes a new policy (HSM-7; see Draft EIR page 5-15); the EIR concluded that this policy element would reduce the Plan-related environmental concern about sea level increases to a less-than-significant level. The District affirms that conclusion.

## 11.8 WATER QUALITY I

This comment opines that, notwithstanding policy CAE-4, the Draft EIR is deficient because it does not conclude that the policy framework will not adequately protect water quality. The comment also indicates the perception that the EIR is deficient because it should have identified, but did not, the water quality standards to which the policy will be compared.

The District observes that this is a variant of comments that have already been addressed in this Final EIR (for example, in Section 8.6).

With respect to the collaborative water quality management approach described in policy CAE-4, the District would presume that the "standard of review" that would be agreed upon would generally be "to be compatible with the Basin Plan." The District presumes that the Regional Board would consult with the District to identify various management practices that would be implemented (by the District and by others who required the District's approval) in order to assure that the District's operations protected water quality

in Humboldt Bay. Because the development of this implementation program is a future event, the Draft EIR would not be able to be more specific about the plan's details.

The District notes that the policy approach specified in Policy CAE-4 was developed in order to comply with the Draft Management Plan's objectives, including the following objective:

- "Develop working frameworks and plans for managing the Bay's environmental resources that incorporate the participation of other agencies and organizations" [Draft Plan, Section 5.2, Chapter 5.0, Section III (page 187)]

The District has concluded that this policy approach, and the Draft EIR's treatment of the environmental concern that underlies it, meets the requirements of CEQA.

## **11.9 SHORELINE ALTERATIONS AND SHORELINE PROTECTION I**

This comment enfolds a number of interrelated elements relating to the development and implementation of shoreline protection measures that address the likely effects of sea level rise within the bay, as well as how that rise may affect adjacent lands. The comment expresses the opinion that the Draft EIR is deficient because it fails to assess the consequences of not including a Plan policy that directs to District to enact shoreline protection measures that may be required to accommodate rising sea level.

The District does not disagree with the comment's identification of the importance of this issue. However, the District does not agree with the thrust of the comment that the District could feasibly enact all of the measures that might be necessary to address the issue if the District were acting alone. The first problem (but not the most difficult to solve) is that the District does not own the existing shoreline levees, and the District would be unable (short of some sort of declaration of emergency, together with the authorization by the Legislature to assume additional authority) to compel any action by the landowners of the bay-margin property that includes the levees. It would be pointless for the Plan to include a policy compelling the District to undertake the physical improvements in the levees because the District currently lacks the authority to do so without the participation of the owners.

While the appropriate solutions to the quandaries posed by sea level rise are currently not known, these solutions almost certainly will involve placing fill into the bay's waters and/or into other wetlands behind the levees. While the Management Plan includes policies that would enable the District's use of fill, there are also a number of other agencies that would have to authorize the fill placement. Absent an emergency declaration of some sort it is unclear that the Coastal Commission, the U.S. Army Corps of Engineers, and several trustee agencies would agree to fill placement into Humboldt Bay or into the diked former tidelands.

The course of action urged in the comment is infeasible; the District cannot act unilaterally in determining the appropriate response to undertaking levee improvements. Policy HSM-7 incorporates a collaborative plan development in order to identify and incorporate the concerns of the other agencies and the involved landowners. The District

has concluded that this approach satisfies the District's need for policy direction, and that the Draft EIR properly addresses the CEQA requirements for assessing this issue.<sup>5</sup>

## **11.10 EROSION AND SEDIMENTATION II**

This comment states an opinion that the DEIR is deficient because it does not address the absence from the Draft Management Plan of policy formulations that direct the District to assume regulatory authority over erosion and sediment mobilization in areas that the comment acknowledges are "outside the District's jurisdiction." The comment further states an opinion that the Draft EIR is deficient because it should have identified and addressed alternatives to the proposed Management Plan "that would reduce the need for dredging."

The first part of this comment covers essentially the same subject that has been addressed in earlier sections of this Final EIR (e.g., Section 8.6 and Section 10.8).

The second element in the comment essentially suggests that the EIR should have created a policy element that was not included in the Draft Management Plan: a policy that seeks to reduce the amount of dredging conducted in Humboldt Bay.<sup>6</sup> The District notes that this suggestion was not raised in any of the Initial Study responses or in the involvement of many members of the public in developing the "scope" of the Management Plan.

Dredging within Humboldt Bay (including the bay entrance) was discussed in the Draft EIR in terms of both its effects on the physical and biological environment and the relationship between dredging and human uses in the bay. The District affirms the essential conclusion in the Draft EIR that some degree of dredging appears to be necessary for there to be any assurance that most or all of the anticipated human uses in Humboldt Bay will be available for current future bay users.

The dredging currently carried out in the bay is a shared responsibility between the federal government (the U.S. Army Corps of Engineers) and local governments (primarily the District and the City of Eureka). The federal maintenance dredging carried out in the navigation channels and turning basins in the bay follows the direction of Congress, expressed in one or more versions of the federal Water Resources Development Act (WRDA) and subsequent appropriation bills.<sup>7</sup> Reducing the extent of this federally

---

5 A significant element in the necessary program to address levee enhancement is the identification and apportionment of costs, which is an issue that would not, in most circumstances, appear in an EIR. Most likely some public funding would be involved, but it is also likely that there would be costs (potentially significant) for the owners of adjacent lands. In order to apportion the costs and then collect the offsetting revenues it would be necessary to involve landowners in some sort of assessment proceeding or other financing arrangement. This EIR cannot specify in any way how these efforts would be enacted, but the District has concluded that precipitate, unilateral action by the District would be counterproductive, and that only a collaborative approach (as is indicated in Policy HSM-7) is likely to enable a solution to this concern.

6 The District understands this comment to address CEQA's requirements for identifying a range of feasible alternatives, as required by, e.g., Section 21002 of the Act.

7 The Humboldt Bay Deepening Project was a separate federal project, also directed by Congress in a WRDA and in subsequent appropriations legislation.

directed maintenance dredging is not a feasible option for the Management Plan; so long as the dredging is included in federal legislation it will be enacted (as was noted in DEIR subsection 5.3.2.2). Maintenance dredging carried out near mooring basins (e.g., the Woodley Island Marina) and various privately owned shoreline docks is carried out by the District and other local agencies as an implementation of locally adopted management plans. The extent of this locally authorized maintenance dredging could be reduced, as this comment suggests, as an alternative approach to bay management.

Reducing the extent of locally authorized maintenance dredging would likely adversely affect many user groups and an unknown number of individual bay users. Shoaling within the District-owned and City of Eureka-owned moorages in the northern part of Entrance Bay, and in the King Salmon area in the southern part of Entrance Bay, is an existing significant concern for both private boaters and commercial fishermen. Reducing the extent of this locally authorized maintenance dredging would unquestionably adversely affect these user groups, and likely other users as well. However, as above, the degree of this adverse change is uncertain and it would be highly speculative for this EIR to attempt an assessment of the extent of the effect.

The Draft Management Plan requires a “balancing” of interests in carrying out the Legislature’s directives to manage the bay’s tidelands in the public interest. Determining the appropriate tradeoff or balance of impacts and benefits is a “legislative,” and not a regulatory “adjudicatory,” determination that must be made by the District’s Board of Commissioners. Identifying the nature of such a “tradeoff” is beyond the scope of this EIR as an environmental disclosure document.

At the present time the District’s Board of Commissioners has neither addressed nor decided the question of whether there should be a reduction, no change, or an increase in the extent of locally authorized maintenance dredging in the Bay. In order to assure that the Management Plan’s environmental effects are fully incorporated into the Plan’s policy framework, an additional policy element can be included in the Plan that formally places the question about the extent of locally authorized maintenance dredging squarely before the decision-makers. Therefore this Final EIR recommends that the following additional policy be included in Plan Section 3.4, Chapter 3.0, Section III of the Management Plan (added text underlined; existing policy HWM-7 will be renumbered to HWM-8)):

**HWM-7: Evaluate the extent of maintenance dredging required to meet the Management Plan’s objectives**

Policy: The District shall monitor the extent of maintenance dredging that is necessary to attain the policy balance required by the Management Plan. The District shall monitor sediment deposition within the bay’s navigation channels, in moorages, near docks, and in other locations that have historically needed dredging to maintain their utility for bay users. The District shall also monitor user needs by soliciting comments from bay user groups and interested parties. District staff shall annually report to the Board of Commissioners regarding the current need for maintenance dredging. The District shall consider, no less frequently than once during each five-year period in which the Management Plan is in effect, whether the overall maintenance dredging policy framework adopted for the bay continues to meet the Management Plan’s objectives.

The District finds that the addition of this policy reduces the potential policy related environmental concerns for maintenance dredging to a less-than-significant level.

### **11.11 WATER QUALITY II**

This comment appears to express the opinion that the Draft EIR is deficient because it does not include an assessment of the “impaired status of Humboldt Bay,” or the lack of a Management Plan policy that requires that the District act to “remedy” that status.

This is essentially the same comment that is addressed in Section 8.6 of this Final EIR, and the District’s response is essentially the same. Under state law the Regional Water Quality Control Board is the primary agency that has regulatory authority for water quality in Humboldt Bay. The District has no authority to regulate water quality. The District will collaborate with the Regional Board and other state (e.g., the Department of Health Services) and local agencies (e.g., the Humboldt County Department of Environmental Health) in implementing the state’s water quality laws, but the District has no obligation or purview to assume any direct authority over water quality.

### **11.12 ODOR MANAGEMENT**

This comment expresses an opinion that the Draft Plan should include a policy that directs the District to consider odors when implementing the Plan, and to direct applicants not to create nuisance odor levels. The comment opines that the Draft EIR should have addressed the absence of such a policy.

The District takes note of the comment, but observes that this is not an issue that falls within the District’s authority. The District declines to declare that the District will in the future regulate odors. In the interim the District will consider the odor-generation potential of actions that the District might approve, as part of the environmental assessment process that is carried out prior to the approval of these actions. The District does not find this to be a substantial environmental issue, and does not agree that the Draft EIR should have addressed this issue.

### **11.13 BAY ECOSYSTEM PROTECTION POLICY**

This comment appears to state an opinion that the Draft EIR is deficient because it only includes a policy commitment to ecosystem protection. The comment is ambiguous, because it specifically cites (new) policy CAE-1, on page 8-24 of the Draft EIR, which clearly states the District’s policy commitment to protecting and managing for the maintenance of ecosystem processes, but then states that the DEIR is deficient because it does not “explore” what the policy commitment means.

The District disagrees with the comment in a fundamental way, because the policy statement is the District’s commitment to ecosystem protection. The policy commits the District to considering the potential effects on the Humboldt Bay ecosystem of any action that the District might approve. Therefore, while the issue constitutes a substantive issue, the District finds that the EIR has addressed it.

In a practical sense, the relationships among ecosystem processes and ecosystem elements in the bay, the watershed, and the nearshore Pacific Ocean are not fully known,

and the District will continue to seek knowledge about these relationships. The potential interrelationships among bay uses and ecosystem elements are also not fully understood, and the District will seek to explore those relationships further. The District acknowledges that the application of an ecosystem-based management approach to Humboldt Bay will occur through time as the District's understanding of the bay ecosystem increases. The District has concluded that the ongoing development of the ecosystem-based management policy appropriately carries out the District's direction from the Legislature.

### **11.14 AQUATIC ECOSYSTEMS**

This comment states an opinion that the Draft EIR is deficient because it fails to describe an alleged inadequacy in the Draft Plan, namely the lack of a policy commitment to the "restoration of native marshland."

The District observes that the comment is incorrect regarding the Draft Management Plan, which does, in fact, have policies that commit to the restoration and/or enhancement of wetlands and native species habitat. Policy CAE-3 [Section 5.2.2, Chapter 5.0, Section III of the Draft Plan (page 188)] includes a commitment to restore or enhance wetland ecosystem elements in the bay. Policy CAS-1 (Section 5.3, Chapter 5.0, Section III of the Draft Plan (page 190)) includes a commitment to maintaining habitat for native species, including restoring habitat where feasible. The District affirms the intention of the Draft Management Plan to maintain, enhance, and/or restore biological diversity in the Humboldt Bay ecosystem to the extent that the ability to do so lies within the District's authority.

The District further observes that it is unlikely to be possible to protect or restore wetlands in Humboldt Bay by simply avoiding any kind of active management. The effects of rising sea level, invasive species, prior environmental modification, and other "environmental stressors" on aquatic ecosystem elements in the bay cannot be addressed without active intervention. The District has concluded that it is appropriate to involve interested parties in the development of a "strategy" that includes responding to these stressors, and this is the primary reason that the Draft Management Plan includes policies that call for the collaborative development of restoration, enhancement, and management plans for these elements.

The District finds that this comment is not a substantive issue for the EIR because the comment is not responsive to the actual content of the Draft Plan and Draft EIR.

### **11.15 BIOLOGICAL DIVERSITY**

This comment states an opinion that the Draft EIR is deficient because it doesn't identify a policy omission from the Draft Management Plan for actually "maintaining native biological diversity and important habitats."

The District observes that this comment (as with the previous comment) appears to misinterpret the policy framework underlying the management of Humboldt Bay's aquatic ecosystem. The comment states an opinion that a policy statement that includes a District commitment to maintaining biological diversity together with a commitment to collaboratively developing a plan that maintains native species populations and habitats

is somehow less valuable in protecting native biological diversity than is a policy statement that the District will maintain native biological diversity and habitats.

The District does not agree with this opinion. As with the previous comment, this comment appears to discount the effectiveness of policies that are included in the Draft Management Plan in maintaining native biological diversity (e.g., policies such as CAE-3 and CAS-1). As with the previous comment, the District concludes that this comment raises no new substantive environmental issues and that the comment itself is non-responsive to the actual content of the Draft Plan and the Draft EIR.

### **11.16 FISH, WILDLIFE, AND PLANT SPECIES**

This comment expresses an opinion that the Draft EIR is deficient because it fails to conclude that the Draft Management Plan lacks a policy “which commits to a restoration plan.”

The District observes that this comment also appears to misinterpret the policy framework in the Management Plan. The cited policy (CAE-3) does, in fact, direct the District to collaboratively develop and implement a plan for maintaining, enhancing, and/or restoring aquatic ecosystem elements. An additional policy (CAS-1) explicitly directs the District to follow the same course with respect to native biological diversity (i.e., fish, wildlife, and plant species) and their habitats. These policies, in combination with the other policies in the Draft Plan, fully accomplish the comment’s apparent goal of establishing a commitment to developing a restoration plan.

As with the previous two comments, the District concludes that the subject of this comment is already fully addressed in the Draft Plan and the Draft EIR.

### **11.17 SHORELINE ALTERATIONS AND SHORELINE PROTECTION II**

This comment appears to be focused primarily on the framework of the Draft Management Plan, but it also implies that the Draft EIR was deficient in not identifying as an adverse effect the lack of a policy commitment that the District would actively undertake unilateral shoreline management actions.

This is essentially the same comment as that addressed in Section 11.9 above, and the District’s response is the same.

### **11.18 RECREATION AND ACCESS**

This comment states an opinion that the DEIR was deficient in not identifying the policy approach to managing public access to Humboldt Bay in the Draft Management Plan as an adverse environmental effect. The comment urges that the DEIR should have identified a policy that requires the District to provide access to the bay as part of any project it approves as the environmentally appropriate policy.

The District does not find that this comment raises a substantial issue that was not already addressed in the Draft EIR. As stated in the Draft EIR, unrestricted public access to environmentally sensitive habitats has been well demonstrated to lead to significant environmental deterioration. Further, unrestricted public access within industrial areas

along the bay's shoreline clearly has a potential to expose members of the public to hazardous conditions. These considerations are all addressed in Policy RFA-2 in the Draft Management Plan, which reflects the District's intended management direction.

A more fundamental concern with respect to the Management Plan is that the District does not possess regulatory control over upland land uses. This context has been addressed previously (e.g., in Final EIR Section 10.6). In essence, the District simply lacks the legal authority to mandate public access over uplands adjacent to the bay.

### **11.19 CULTURAL RESOURCES**

This comment states an opinion that the Draft EIR is deficient because it does not identify the Draft Management Plan's policy approach to cultural resources management as an adverse environmental impact.

The District does not agree. In a policy context the Wiyot Tribe occupies several roles, including collaborating government entity and affected landowner, as well as having the special status awarded to Native Americans under state and federal law. All of these contexts require that Native American needs be considered in managing the bay, and the District is committed to assuring that the Tribe is fully engaged in that management.

At the same time, there are also other interests that affect the bay's management, and the District is obliged to consider these interests. As stated in the Draft Management Plan and in the Draft EIR, the District must "balance" the needs of all of the competing, conflicting, and/or complementary uses that are subject to the District's jurisdiction, adopting an even-handed approach that recognizes the importance of Native American and other cultural resources while also addressing the importance of other concerns.

Generally, the District concludes that the issue raised by this comment has already been addressed. See Chapter 4.0 of this Final EIR for additional information.

### **11.20 AESTHETIC CONSIDERATIONS GENERALLY**

This comment states an opinion that the Draft Management Plan should include "a policy that does not allow adverse impacts to visual resources, noise and other aesthetics." By implication the Draft EIR is deficient because it did not identify the lack of such a statement as an adverse effect.

The District does not agree, in a general sense, although the District agrees that aesthetic issues within the bay's tidelands do lie within the trust concerns covered by the District's management authority. Chapter 15.0 in the Draft EIR addresses noise as a primary District aesthetic resources concern, but Chapter 15.0 also addresses aesthetic concerns more generally. As noted in the Draft EIR (see subsection 15.1.1.3), aesthetic concerns are invariably highly subjective, and some people might identify a given aesthetic effect that occurs as a consequence of implementing the Management Plan as an adverse change, while other people would find the same effect to be a positive aesthetic effect.

It must be noted, however, that the Humboldt Bay Management Plan does not apply to upland land uses, the aesthetic effects of which are regulated by the County of Humboldt, the City of Eureka, the City of Arcata, at least two federal landowners, and the Wiyot

Tribe. Other aesthetic concerns (particularly for visual resources and air quality/odor) are regulated for private lands in the watershed under state and/or federal law, in contexts that are beyond the District's regulatory purview.

The District affirms that the Draft EIR's portrayal of potential aesthetic effects complies with CEQA's requirements for disclosing potential aesthetic effects, and that additional discussion and/or additional policy elements are not required.

**LAW OFFICES OF SHARON E. DUGGAN**

370 Grand Avenue Suite 5  
Oakland, CA 94610  
(510) 271-0825

Facsimile: (510) 271-0829

June 8, 2006

VIA HAND DELIVERY

Humboldt Bay Harbor, Recreation, and Conservation District  
601 Startare Drive  
Woodley Island  
P.O. Box 1030  
Eureka, CA 95501

RECEIVED  
JUN 08 2006  
H.B.H.R. & C.D.

RE: Comments on the Humboldt Bay Management Plan Draft Environmental Impact Report

Dear District Members:

This comment is submitted on behalf of the Environmental Protection Information Center ("EPIC"), a non-profit organization with offices in Eureka and Garberville, California. EPIC works for sound protection of our ecological resources and the environment. For many years, EPIC has worked tirelessly in its efforts to protect the Humboldt Bay and its surrounding environs from damaging and inappropriate development, activities and disregard for the natural and cultural resources present in the Humboldt Bay ecosystem

EPIC is quite concerned about the Humboldt Bay Management Plan ("Plan") and the accompanying Draft Environmental Impact Report ("DEIR"). This concern arises from the insufficient detail for the Plan and a corresponding lack of adequate environmental review within the DEIR for to understand the environmental effects associated with management of the Humboldt Bay.

We refer to our letter to Jeff Robinson, dated April 28, 2005, wherein EPIC outlined the several documents the Humboldt Bay Harbor Recreation and Conservation District ("District") has developed either alone, or in conjunction with other agencies. A copy is enclosed. At the time we sent that letter we expressed our concern that the District was engaged in developing policy and management without complying with lawful process, including public and environmental review. The documents referenced include the Humboldt Bay Revitalization Plan (2004), the Harbor Revitalization Plan (2003), and the Strategic Plan (2001). It is clear, from reviewing the Plan that the District is relying upon direction and policy from these documents, notwithstanding the lack of public and environmental review. Those documents should have been included as part of the Plan for public review, and their elements and provisions included within the analysis of the DEIR. This has not happened. As a consequence, the DEIR has failed

11.1.1

- 11.1.2 | to fully describe the project under review, which is framed, to some extent, by these pre-existing documents. We believe this analysis also extends to the Humboldt Bay Channel Deepening Project, which is also referenced in the Plan.

The Plan provides several policies for the District to employ in the future. As we read many of these policies, we are troubled by the lack of commitment. This is particularly true when dealing with natural resources and conservation, and less true for those harbor-related land use and development. In many cases, the policy calls for the District to conduct a study, to work collaboratively, to address issues, but not to actually protect resources. In large part, the Plan sets out ideas, rather than commitments. We are also concerned that the Plan fails to determine how to deal with resource conflicts, leaving it to future collaboration with other agencies and Bay users. (Plan at p. 128.) There is no guarantee that such processes will be open to public and environmental review.

- 11.2 | We are concerned that the EIR will be relied upon in the future for specific projects, notwithstanding its failure to evaluate the environmental effects associated with the inadequate Plan. It appears that this EIR will be used to develop these future standards, studies and criteria, with no future environmental review.

- 11.3 | The District tries to sidestep evaluation of many environmental effects by claiming it has limited geographic jurisdiction. However, environmental effects do not recognize political boundaries. The DEIR fails to analyze the unwillingness of the Plan to provide meaningful policies to ensure that activities which do affect the Bay will be mitigated or prevented.

The use of a program EIR “does not excuse a governmental entity from complying with CEQA’s mandate” to prepare an EIR which includes a “detailed statement setting forth ‘[a]ll significant effects on the environment of the proposed project.’” (*Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4<sup>th</sup> 182, 197, quoting §21100.)

#### **Alternatives**

- 11.4.1 | The DEIR fails to address the required range of reasonable alternatives. It is insufficient to consider only a no project alternative within the DEIR. The DEIR should have considered alternatives to the various policy proposals as a means to provide the least damaging alternative. The DEIR is fundamentally flawed because of the lack of consideration of reasonable alternatives for management policies for the different uses and areas of the Bay. Some of these alternatives were presented to the District in response to comments on the Plan itself, such as the need to have a policy for energy efficiency and non-structural protection methodologies. As one reads the policies that are proposed, in so many instances, other alternatives exists. EPIC believes that

- 11.4.2 for every policy which calls for collaboration or a study, the policy must include a commitment as to the direction to be taken. To the extent that various policies do not do this, the DEIR needs to evaluate the alternative of such a policy commitment.
- 11.4.3 For the no action alternative, the DEIR failed to consider the current state of Bay and what is happening now, and instead relies upon the 1975 Management Plan. This is insufficient. The current state of the Bay is the baseline from which analysis must issue.

### **Cumulative Effects**

- 11.5 The DEIR does not adequately address cumulative impacts. Instead, it takes an approach that has been soundly rejected by the courts, that is, the District intends to deal with cumulative impacts on a project-by-project level. This is the very antithesis of a cumulative impacts analysis, which requires that an DEIR evaluate the collective and incremental significance of many projects that individually may not be significant, but collectively are adverse. The collective impact of policies which allow dredging or increased industrial development, but only allow for study of shoreline protection measures, must be evaluated. The DEIR fails to meet the requirement for cumulative impacts analysis.

### **Chapter 3. Geology**

- 11.6 The DEIR fails to address geological instability which affects the Bay, such as landslides and sedimentation from upstream adjacent lands through industrial activity. The Plan provides no policy to deal with this known source of sedimentation, and the DEIR fails to evaluate the environmental effect of not having an adequate policy to address these impacts.
- 11.7 While mention is made throughout the DEIR about the effect of climate change on sea levels, the DEIR (as well as the Plan) fails to deal with this reality for what it is. The District must deal with global warming as must anyone or any entity. The Plan refuses to propose a policy which will affirmatively address the potential for dramatic flooding and sea level increases in the very near future. The DEIR in turn fails to evaluate the impact of not having a valid policy in place to do what the District can to tackle this problem for the Bay.

### **Chapter 4. Hydrology**

- 11.8 The same concerns as expressed for geology are present here as well. While the Plan has policy CAE-4 to adopt a Water Quality Management Plan (4-20), there is no statement as to what review that plan will be subject to. Nor does the DEIR explain and evaluate how the Plan can guarantee this water quality management plan can guarantee that it shall consider "the potential

- 11.9 effects of all management actions carried out by the District.” (4-20.) It appears to be an empty promise. The DEIR should analyze the potential impact of not evaluating all management actions. This same issue exists for policy HSM-7, which proposes a plan in response to rising sea levels. The policy only requires a plan that identifies alterations and maintenance, stopping short of requiring the District to undertake necessary shoreline alterations and maintenance. The difference is critical, as in the absence of a commitment to actually do something, the likelihood of significant environmental effect increases. The DEIR needs to evaluate the potential adverse impact from a policy that simply directs a study, with no commitment to action. And the DEIR needs to evaluate the alternative of a policy which has such a commitment to action. The DEIR should evaluate the alternative of a policy which would simply commit the District to fixing any shoreline features, such as levees, and the environmental consequences of not having that commitment.

#### **Chapter 5. Erosion and Sedimentation**

- 11.10 The DEIR fails to consider alternatives that can reduce sediment, including sediment from areas outside the District’s jurisdiction. In turn, the DEIR needs to evaluate alternatives that would reduce the need for dredging, as a mean to reduce impacts on species and habitat. Even though land uses which affect the Bay may be outside the District’s jurisdiction, the Plan needs policies to deal with the effects on the Bay from those activities. The DEIR needs to evaluate the impact of not having such policies, and needs to consider alternatives that would include such policies.

#### **Chapter 6. Water Quality**

- 11.11 The DEIR fails to evaluate the impaired status of Bay and the lack of a policy to affirmatively address this condition so as to remedy it.

The same comments about the Water Quality Management Plan apply.

#### **Chapter 7. Air Quality**

EPIC recognizes the importance of policy HTM-3 that actually requires compliance with local air quality standards AQMD Rule 420. This is the kind of affirmative policy that is needed for the Bay.

- 11.12 This same kind of policy is needed to address nuisance odors. Instead, the Plan has a policy to adopt future standards to deal with odor. The DEIR needs to evaluate the impacts of the failure to have a policy which requires projects to not produce nuisance levels of odors. This

is also an alternative to be considered.

#### **Chapter 8. Aquatic Ecosystem Elements and Ecosystem Dynamics**

- 11.13 Policy CAE-1 provides that the District shall “actively focus” its implementation of the Plan on protecting, maintaining etc the Bay ecosystem characteristics. But there is no consideration of what that means. The DEIR should explore that to fully appreciate what might be the effect of the policy. This is critical because, the last part of the policy merely requires the District to “incorporate an understanding” of the Bay’s ecosystem needs. Clarity is necessary. Again, the policy alternative is to actually commit to ecosystem protection, and not just give a nod by “an understanding.” The varying environmental effects may be key and must be evaluated.

#### **Chapter 9. Wetlands, Streams, Riparian Areas, and Watershed Areas.**

- 11.14 This chapter evaluates policies for which the comments above are relevant. The policies are designed to develop standards and plans, with clear commitment to development of industrial uses, but no clear commitment to protection of the resources. The environmental effect of this failure to have a policy which will actually protect must be evaluated. The Plan itself says that the District will only “generally support” restoration programs for native marshland species. (Plan at 124.) The failure to have in place a policy which will ensure restoration of native marshland must be evaluated as an environmental impact.

#### **Chapter 10. Eelgrass**

- 11.15 This chapter provides policy CAS-1 that also intends to develop another plan to focus on maintaining native biological diversity and important habitats. The Plan needs a policy that will maintain native biological diversity and important habitats. The DEIR must evaluate this as an alternative and evaluate the environmental effects of not having such an affirmative policy.

#### **Chapter 11. Fish, Wildlife, and Plan Species and Their Habitats**

- 11.16 The DEIR references policy CAE-3 which requires collaboration to develop a restoration plan. As above, the Plan needs a policy which commits to a restoration plan, and the DEIR needs to evaluate the environmental effects of not having such a policy. This is yet another alternative to be presented. The same comments as provided for Chapters 8 and 10 apply here as well.

#### **Chapter 12. Water Use and the Built Environment of Humboldt Bay**

- 11.17 | Policy HSM-2 requires the District to conduct inventory of levees and other shoreline protection devices to “develop standards with a consideration” of improvement needed. Why not have a policy which simply says that shoreline protection improvements will be undertaken? The difference between the two is critical, and the environmental effects of either must be evaluated.

#### **Chapter 13 Recreation and Coastal Access**

- 11.18 | The policy HSM-2 requires development of standards for shoreline improvement which shall include “considerations” for public access, rather than actually requiring public access. The DEIR needs to evaluate the environmental impact of not simply allowing public access, and must consider a policy alternative that would require public access. This applies to the other policies outlined in this chapter.

#### **Chapter 14. Cultural Resources**

- 11.19 | EPIC believes that any policy which facilitates use of the Bay has potential for impact on cultural resources. The DEIR fails to evaluate this potential. For too long the Native American people and their needs have not been treated fairly. The Plan must fully incorporate their needs. The DEIR must evaluate in detail the impacts to cultural resources from continued commercial use of the Bay and the failure of the Plan to adequately address this.

Policy HSM-2 requires the District to develop standards which shall address potential effects to cultural resources. The alternative is a policy should affirmatively prevent effects on cultural resources. To the extent it does not, the DEIR needs to evaluate the environmental effect of the failure to do so. An example of where this is done is in Policy RFA-6. The other policies are too vague.

#### **Chapter 15. Visual Resources, Noise and Other Aesthetic Considerations**

- 11.20 | Policy HLU-7 merely recites what the law requires, to consider impact and reduce impacts to level of insignificance. As an alternative, the Plan should have a policy that does not allow adverse impacts to visual resources, noise and other aesthetics.

Humboldt Bay Harbor Recreation and Conservation District  
June 8, 2006  
page 7

---

We appreciate your careful consideration of these comments.

Sincerely,

A handwritten signature in cursive script, appearing to read "S. Duggan".

Sharon E. Duggan

sed.fw

Enc. April 28, 2005 Letter

This page is intentionally blank